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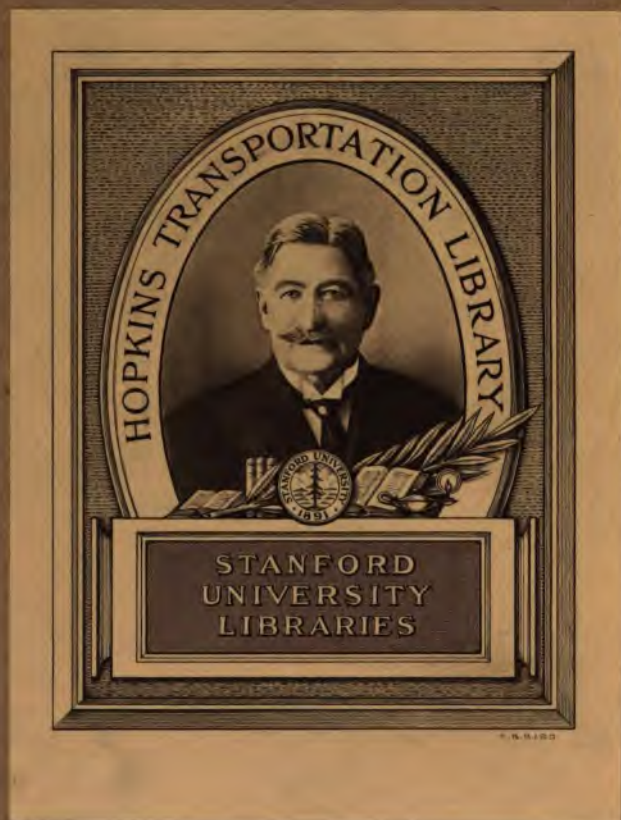
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GOVERNMENTAL OWNERSHIP

THE ALTERNATIVE OF

GOVERNMENTAL RATE-MAKING.

**THE IMPRACTICABILITY AND REVOLUTIONARY
CHARACTER OF THE ENTIRE SCHEME.**

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By JOSEPH NIMMO, Jr., LL. D.,

Statistician and Economist,

September 16, 1905.

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FOR ALL THE DAYS

JOSEPH NIMMO, JR.

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After centuries of futile and depressing efforts to control human activities through the exercise of autocratic governmental power, the English speaking people of the globe remitted such exercise of power to judicial determination guided solely by the rule as to what is just and reasonable. This defined what is known throughout the world as *liberty regulated by law*. But at this late day there is a popular movement in the nature of falling back to the old policy of governmental imperialism. This is being done by indirection.

Under the guise of the necessity for governmental control which every intelligent citizen understands to be essential to enlightened civilization, an attempt is being made in this country to subvert the form of government established under the Constitution of the United States for the purpose of securing "the blessing of liberty to ourselves and our posterity." There is talk of penalizing commerce,

and of denying the right to engage in the commerce of the country except under "a Federal franchise or license." Such ideas are repugnant to the principles of liberty upon which our whole system of government rests. As such it is revolutionary.

The particular usurpation of governmental powers which now challenges the public attention is that of abolishing an essential element of "The Judicial Power of the United States," and to confer it upon a bureau of the executive branch of the Government. This involves the abrogation of the judicial determination of the reasonableness and relative justice of commercial transactions—a political principle which has safeguarded the liberties of this country from the beginning—and of making that function an attribute of the executive. This proposed change is as radical as the distinction between governmental imperialism and liberty regulated by law. The specific attempt to accomplish this revolutionary purpose here considered relates to the proposition to deprive the judiciary of the right to determine the reasonableness and relative justice of the charges made for transportation services and to confer that function upon the Interstate Commerce Commission, a bureau of the executive department of the Government. Omitting for the present anything in the nature of a theoretical discussion of this important question attention is invited to some of its practical aspects.

Apparently in order to promote the real object which they have in view the men who advocate this anti-American policy utter the prediction or threat that if the autocratic power to determine rates is not conferred upon the Inter-

state Commerce Commission or some other arm of the executive, the inevitable result will be governmental ownership and control of the railroads of the country. It is stated authoritatively that if the power of rate making is not conferred upon a branch of the executive, a more drastic remedy will be applied to existing conditions. This is generally understood to forecast governmental ownership and control of the railroads of this country.

In a word, governmental ownership is being employed as a club to enforce governmental rate-making by executive order. It is here proposed to consider, first, the "club," and, second, the purpose to be accomplished by means of the "club," attention being confined in either case strictly to the results of practical experience.

HISTORICAL REVIEW OF ATTEMPTS AT GOVERNMENTAL RATE-MAKING IN THIS COUNTRY.

An historical review of the various attempts at governmental rate-making which have been made in this country was prepared by me with great care in the years 1890 and 1891 from State records and other reliable sources of information. The results of my efforts were carefully revised by Secretaries of State and other State officers. The following is a summary of the information thus collated :

ATTEMPTS AT GOVERNMENTAL OWNERSHIP AND CONTROL OF RAILROADS IN THE UNITED STATES.

The States which have attempted and abandoned the experiment of governmental ownership and control of the

railroads are Massachusetts, Pennsylvania, Michigan, Illinois, Indiana and Georgia.

MASSACHUSETTS.—If the successful ownership and management of a railroad by a State government were practicable, such success might have been confidently expected in the Commonwealth of Massachusetts. The Troy & Greenfield Railroad Company was chartered in 1848, but after years of struggle, ending in failure, the State took possession of the entire road in the year 1866 and completed it; the work embraced the Hoosac tunnel, the longest railroad tunnel in the United States. Different plans of administration were resorted to, but without success, and in the year 1887 the entire property passed from the possession of the State to that of the Fitchburg Railroad Company. Thus did the good State of Massachusetts, as the result of an earnest effort, yield its verdict in favor of the proposition that railroad transportation in this country must be regarded as a private enterprise and not as a public function.

PENNSYLVANIA.—The State of Pennsylvania made the earliest and perhaps the boldest attempt in this country at State railroad and canal ownership and control. In pursuance of legislation adopted in 1825, the State embarked in the construction of a transportation line from Philadelphia to Pittsburg. This line, begun in 1828, consisted of a railroad from Philadelphia to Columbia, eighty-four miles long, where it connected with a canal extending to the base of the Allegheny mountains. The mountain summit was overcome by a system of inclined planes extending to Johnstown, and a canal on the western slope

completed the line to Pittsburg. The State of Pennsylvania sold these works to private corporations in the year 1859, as the result of a conviction drawn from experience and never shaken, that the work of transportation must be regarded as a private enterprise and not as a public function.

MICHIGAN.—Soon after the admission of Michigan into the Union, in 1836, the State government entered upon a scheme of railroad construction and operation, aided by a large land grant from Congress for internal improvements. This scheme embraced the Michigan Central Railroad, the Michigan Southern Railroad, and other lines. The impracticability of the scheme was soon developed. In 1846 the Michigan Central was sold to a private corporation formed by Boston capitalists. The sale of the Michigan Southern followed soon afterwards, and in the year 1850 the people of Michigan incorporated into their constitution a provision which forever inhibits the State from being interested in or engaged in carrying on any work of internal improvement. Thus did the people of Michigan express, as the result of practical experience, their conviction that the work of transportation, as well as the maintenance of a railroad, must be remitted to private enterprise, and that it cannot be treated as a public function.

ILLINOIS.—The State of Illinois in the years 1838-'39 built, and for about two years operated, the "Northern Cross Railroad," extending from Springfield to Meredosia, a distance of about fifty miles. This work cost about \$1,000,000. It was operated by the State for two years. The income from it was less than the expense of operating

it, and it was eventually sold for \$100,000. It is now a part of the Wabash Railroad. The people of Illinois have never since attempted to embark in the experiment of State ownership and management of a railroad.

INDIANA.—The State of Indiana began the construction of a railroad from Madison, on the Ohio River, to Indianapolis, in pursuance of the provisions of an act adopted January 27, 1836. Twenty-eight and a quarter miles of the road were constructed by the State at a cost of \$1,200,000, including the cost of an inclined plane at Madison. By an act of the Legislature, adopted in 1842, the State ceased to operate this portion of the line February 20, 1843, and it passed under the control of a private corporation, which completed the road to Indianapolis in the year 1849. The people of Indiana have never since manifested any desire to renew the experiment of State ownership and control of a railroad. On July 1, 1847, the State of Indiana turned the Wabash and Erie Canal over to a private corporation, and thus, like the State of Pennsylvania, completely divested itself of all responsibility for the conduct of transportation, both by water and by rail—a responsibility which had been attended with unceasing contention and trouble.

GEORGIA.—The State of Georgia embarked in the work of State ownership and management under exceptionally favorable circumstances. The Western and Atlantic, or State Road built by the State, was opened for traffic in the year 1850. It connected the railroads of the central and western sections of the country with those of the South Atlantic States. Although this attempt was made in a progressive State, well administered, the practical results of

the experiment clearly illustrated the folly of attempting to operate a railroad through the instrumentalities of a State government. The economies of management were subordinated to political exigencies, and bad administration frittered away exceptional opportunities for success, afterwards realized under private corporate control. The experiment completely illustrated the folly of attempting to make the work of transportation a public function. In 1870 the Western & Atlantic Railroad was leased to a corporation for 20 years at a rental of \$25,000 a month. It is now a part of the Atlantic Coast Line System.

In a letter dated June 18, 1891, the Honorable Joseph E. Brown, former Governor of Georgia and United States Senator, gave me the following testimony in regard to governmental control of railroads :

"I cannot think that there is any serious danger that our Government would be guilty of the folly of attempting to purchase all the railroads of this country and put them under Government control. Your published articles alone gives sufficient reasons why such a system would be impracticable and intolerable."

Many years ago several other States of the Union made large loans and grants of lands, or became stockholders in railroads from correct views as to their enormous powers for developing the natural resources of the country ; but such States prudently refrain from any attempt at State management of railroads. The State of Virginia, for example, was at one time a subscriber to two-fifths of the stock of certain railroads and canals, but was never tempted into the experiment of State railroad management. The State of Missouri became the owner of several railroads

upon the default of their obligation to the State ; but the experiences of other States deterred the people of Missouri from the experiment of State management, accordingly such roads were sold in 1868 to private corporations.

The general tendency of all the States during the last thirty years has been to withdraw from financial association with railroad construction.

The fact of chief importance in considering the merits of the proposition of governmental ownership and control of the railroads is that all the experiments in that direction as above described, were made at a time when the conditions were much more simple and very much more favorable to success than at the present time. When these experiments were made each railroad was an autonomy in the work of transportation, whereas at the present time each line is an integral part of a gigantic and exceedingly complex national railroad system, created by Act of Congress in obedience to a coercive public demand. Besides such governmental interference with the commercial and industrial interaction of the people as that instituted by the States mentioned proved to be repugnant to every true conception of American liberty.

I next consider the purpose intended to be accomplished by means of the "club" of State ownership and control.

THE DEMAND FOR THE AUTOCRATIC DETERMINATION OF RATES BY THE INTER-STATE COMMERCE COMMISSION HAS NO BASIS IN REASON OR IN EXPERIENCE.

That the determination of railroad rates by a bureau of the executive department of the Government has not the slightest warrant or even shadow of excuse in the rail-

road transportation experiences of this country is evident from the following statements as to the results of railroad transportation under the wholesome and effective restraints of the time-honored provision of law and of statutory railroad regulations based upon the lessons of experience.

I. EXORBITANT RATES "AN OBSOLETE QUESTION."

The Interstate Commerce Commission has repeatedly declared that exorbitant railroad rates is "an obsolete question in this country." Besides, the recent report of the Commission in reply to Senate Inquiry of January 16, 1905, reveals the remarkable fact that during the eighteen years of the existence of the Commission *not a single case of exorbitant rates was proved in the courts of the United States.*

2. ONLY ONE CASE OF UNJUST DISCRIMINATION IN MANY MILLION FREIGHT TRANSACTIONS APPEALED TO THE COURTS.

The reply of the Commission to Senate Resolution of January 16, 1905, also reveals the important fact that during the eighteen years of its existence only forty-five cases of unjust discrimination and other offenses were appealed to the courts, of which cases only eight were sustained by the courts out of hundreds of millions of freight transactions annually.

The significance of this statement is strikingly illustrated by information in regard to the number of freight transactions in a single year furnished to me by nine of the leading railroad companies of the United States, namely, the Boston & Maine, the Pennsylvania, the Chicago & Alton, the Chicago, Milwaukee & St. Paul, the Atchison,

Topeka & Santa Fe, the Northern Pacific, the Delaware & Hudson, the Union Pacific, and the Southern Pacific. From this data it appears that there were *about three hundred and forty million freight transactions* on the railroads of the United States during the year 1904. This indicates that during the existence of the Commission there were about *three hundred and eighty million freight transactions to each case appealed by it to the courts*, and sustained by the courts.

The foregoing statements clearly prove that the evils of railroad transportation, concerning which so much has been said by advocates of commission rate-making, are merely incidental evils and frictional resistances of the grandest system of transportation ever known on this planet. All experience indicates that a nearer approach to perfection is impracticable.

3. RAILROAD FREIGHT CHARGES ARE ABSOLUTELY CONTROLLED BY COMMERCIAL CONDITIONS.

It is a fact not generally acknowledged, but proven beyond all question, that the influence of commercial and industrial forces constitutes overwhelmingly the governing condition in the determination of actual and relative rates of transportation in this country. At the recent hearings before the Senate Committee on Interstate Commerce seven Railroad Presidents testified to the controlling influence of commercial forces in rate-making—namely, Mr. Samuel Spencer, President of the Southern Railway Company; Mr. Robert Mather, President of the Rock Island Company; Mr. Victor Morawetz, Chairman of the Executive

Committee of the Atchison, Topeka and Santa Fe Railway Company ; Mr. Lucius Tuttle, President of the Boston and Maine Railroad System ; Mr. James J. Hill, President of the Great Northern Railway Company ; Mr. Howard Elliott, President of the Northern Pacific Railway Company, and Mr. Stuyvesant Fish, President of the Illinois Central Railroad Company. That commercial forces constitute the dominant condition in the determination of freight charges is a fact clearly understood and recognized by every Board of Trade and Chamber of Commerce in the United States.

The value of the commodities transported annually on the railroads of the United States is estimated at \$25,000,000,000, the reported value of the entire railroad property of the country is approximately \$14,000,000,000, and the gross annual receipts of the railroads is about \$2,000,000,000. In view, therefore, of the dependence of commerce upon transportation, and of the enormous preponderance of the value of commerce by rail over the receipts from transportation services, it is evident that the autocratic determination of rates would affect commerce much more seriously than it would affect transportation and deal a withering blow to commercial liberty.

The fall of 37 per cent in the average rate per ton per mile charged on the railroads of the United States from 1882 to 1893 amounted on the basis of the tonnage transported during the latter year to the sum of \$787,935,000. This represented the saving to the people of the country from reductions in freight charges and clearly indicates the enormous preponderance of commercial forces in the framing of freight tariffs. The discretionary power in rate-

making exercised by the railroad companies is a comparatively narrow one and is exercised under rigid conditions of restraint.

The art of adjusting rates to the exigencies of commercial and economic conditions is a difficult one, and is acquired only by years of study and practical experience. It may be briefly described as follows: There is a very wide difference between rates which will pay a bare profit above the cost of moving freights from one point to another and rates which will pay their full proportion of all the expenses of operating the road and of meeting the interest due on all the obligations of the company. Between these wide extremes rates must be adjusted in order to meet the inexorable demands of commercial conditions and the financial requirements of the road.

Beyond all question the controlling influence exerted by commercial forces over the rates charged for transportation services constitutes an all-sufficient explanation of the facts already presented, showing that the number of cases arising out of complaints made to the Interstate Commerce Commission is comparatively infinitesimal.

RAILROAD REGULATIONS ENACTED BY CONGRESS ARE
BASED UPON USAGES PREVIOUSLY ADOPTED BY
THE RAILROAD COMPANIES.

The fourth and last consideration here mentioned in opposition to the proposition to confer upon the Interstate Commerce Commission autocratic rate-making powers, connected as that proposition is with the alternative revolutionary proposition in favor of governmental rate-

making, relates to the fact that all the beneficent National railroad regulations which have been adopted in this country by legislative authority are not only the distinct expression but the actual result of the demands of public sentiment in favor of the methods adopted and reforms instituted by railroad managers in the discharge of their administrative duties. This, of course, requires explanation.

The Act of Congress of June 15, 1866, entitled An Act to Facilitate Commercial, Postal, and Military Communication among the States, commonly known as "The Charter of the American Railroad System," converted many disassociated and independent railroads into one closely related and intimately related American Railroad System over which the commerce of the country moves as freely as though it were a single National highway of commerce. Over this vast system railroad trains move without impediment on account of differences of ownership or of State lines. This great and exceedingly complex combination of lines was authorized by Congress in obedience to an overwhelming public demand. But before Congress acted upon this vitally important matter the railroads of the country had proceeded very far in that direction. They had established a uniform track gauge; they had connected their lines and had established joint freight and passenger traffic over their united lines. Besides, the railroad companies favored and aided in securing the passage of the Act of June 15, 1866, through Congress.

The second and perhaps equally important Act to Regulate Commerce, commonly known as "The Interstate

Commerce Act" is also based upon railroad experiences, usages and established expedients and methods. I refer to the provisions of the Act in regard to the establishment of classifications of freight, freight schedules and the publicity thereof, the maintenance of published rates, the avoidance of rebates and unjust discriminations, due notice of proposed changes in rates, and facilities for the interchange of traffic between connecting lines. But the railroad companies in the course of their strenuous efforts to accomplish the ends of self-government had adopted all of these features of governmental regulation long before they were made the subject of statutory enactment. Mr. Albert Fink, for many years chairman of the Eastern Trunk Line Association, was the ablest and most conspicuous advocate and promoter of the cause of railroad self-government. For years he advocated the establishment of the principles and expedients of regulation afterwards formulated in The Interstate Commerce Act. On February 4, 1885, two years before the Interstate Commerce Act became law, Mr. Fink addressed a published letter to the Board of Railroad Commissioners of the State of New York, in which letter he declared that "the purpose for which the trunk lines are associated together is to enforce the adherence by the railroad companies to their published tariffs, to avoid the payment of rebates, and the consequent unjust discrimination between shippers."

During the period from 1875 to 1885 when I was employed as a bureau officer of the National Government in investigating and reporting upon the internal commerce of the United States, Mr. Fink, in his capacity as a special-

ist, submitted to me several reports wherein he opposed rebates and other forms of unjust discrimination, at the same time advocating the publicity of rates and the utmost fairness in railroad transactions. Several years afterwards, all these expedients and usages adopted by the railroad companies for the orderly conduct of the railroad traffic of this country acquired the sanction of law in the Act to Regulate Commerce. Thus in the statutory enactment of the principles of self-government, wrought out by railroad managers, we see again a substantial explanation of the causes which have led to the beneficent and marvelous results of the administration of the Act to Regulate Commerce already described.

This is the way in which that incomparable code, the common law, was built up, and it expresses the best conception of beneficent restraint consonant with the ends of liberty.

When the Commission came to the discharge of its function in the year 1887, its duties related to the administration of a system of transportation wrought out by railroad managers, which had been proved to be beneficent, and in consequence had been sanctioned by law. Small wonder is it then that the work of the Commission should have resulted in so few contested cases that the railroads of the United States appear to constitute an almost perfect system of transportation.

THE SUFFICIENCY OF THE ACT TO REGULATE COMMERCE AS AMENDED.

The function of the Interstate Commerce Commission is not only in accord with the established usages of railroad management and railroad self-government, wrought out in

the school of experience by railroad managers, but it is broad based upon the conscience, the understanding and the sense of justice of the American people. The Commission's function is supervisory, and in the nature of mediation, conciliation and arbitration, with the power to appeal its decisions to the Federal courts for review and judicial enforcement. The success of this system of regulation reflects credit upon the American legislator and illumines our civilization. This is clearly indicated by the reply of the Commission, rendered May 1, 1905, to Senate Resolution of January 16, 1905. The Commission reported that from January 1, 1900, to March 1, 1905, the number of informal complaints settled through its mediatorial offices was 2,296. From this it appears that from the time of its organization, April 5, 1887, to March 1, 1905, the total number of informal cases disposed of by the Commission was not far from eight thousand. The record of the results of the administrative work of the Commission for the eighteen years of its existence may be summarily stated as follows:

Informal complaints heard and finally disposed of by the Commission.....	8,000
Formal complaints entertained by the Commission.....	770
Formal complaints which did not come to a final hearing.....	370
Formal complaints which came to a final hearing before the Commission.....	400
Total number of cases appealed to the courts.....	45
Number of cases in which the Commission was sustained by the courts.....	8
Freight transactions (approximately).....	3,000,000,000

This splendid record leaves no room for doubt as to the efficiency or sufficiency of the provisions of the Act to Regulate Commerce, approved February 4, 1887, as amended.

THE PRINCIPLE OF GOVERNMENTAL REGULATION OF THE RAILROADS IS NOT AT ISSUE—ONLY ITS ATTEMPTED ABUSE.

No sensible person who has given serious thought to the railroad problem opposes governmental regulation of the railroads. The most ardent defenders of railroad interests as well as the most radical opponents of the railroads are in accord upon that general proposition. The issue which confronts the people of this country—and it is held to be the paramount political issue now before the country—arises not from governmental regulation true to political principles which conform to the genius of our Government nor from governmental regulations based upon the lessons of experience and proved beyond all doubt to be beneficent. That paramount issue arises solely from the attempt to establish regulations antagonistic to the firmly established principles upon which our political institutions are founded, and from a proposed method of regulation which is revolutionary in character. This scheme of regulation is advanced by men of populistic or State-socialistic views, who would abandon the existing beneficent system of governmental supervision with recourse to the courts in case of complaint as to the propriety and justice of acts committed, and in lieu thereof to place the conduct of the transportation interest and the course of the development

of the commerce of the country at the autocratic discretion of an administrative board. This involves an effete scheme of bureaucracy which the records of history have repeatedly proved to be an intolerable form of despotism.

The form of regulation which now prevails in this country, as already shown, is the result of the teachings of experience. It may properly be regarded as a feature of the common law as developed. In the place of this beneficent principle of government it is proposed to set up in this country a scheme of regulation essentially revolutionary—a scheme which goes in the face of all our cherished conceptions of commercial liberty and reverses the familiar maxim that revolutions never move backwards.

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WASHINGTON, D. C., *Sept. 16, 1905.*

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